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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

GINA ROMERO, Plaintiff and Appellant, v. ALFRED BULBULYAN, Defendant and Respondent.	B160247 (Los Angeles County Super. Ct. No. LC056732)

APPEAL from a judgment of the Superior Court for Los Angeles County, Stanley M. Weisberg, Judge. Affirmed.

Manuwal, Manuwal & Sinclair, Murray M. Sinclair & Associates, Murray M. Sinclair; Law Offices of Michael A. Cholodenko and Michael A. Cholodenko for Plaintiff and Appellant.

Early, Maslach & Rudnicki, Priscilla Slocum; Law Offices of Roxanne Huddleston and Roxanne Huddleston for Defendant and Respondent.

INTRODUCTION

Plaintiff and appellant Gina Romero (Romero) was injured at an apartment building owned by defendant and respondent Alfred Bulbulyan (Bulbulyan) when she slipped on soapy water and fell down a flight of stairs outside of her daughter's apartment. She appeals from a summary judgment entered in favor of Bulbulyan on her premises liability complaint, arguing that there is a triable issue of fact regarding whether Bulbulyan had actual or constructive notice of the dangerous condition of the stairway and therefore was negligent for failing to correct the condition. We affirm the judgment.

BACKGROUND

Bulbulyan purchased a six-unit, two-story apartment building in early June 2000 (all further references to dates are to the year 2000). Romero's daughter lived in an apartment on the second floor, which was accessible only by an exterior staircase. Romero's son and his wife lived in an apartment on the first floor.

At approximately 12:40 p.m. on July 15, a Saturday, Romero arrived at the building to visit her daughter. As she walked up the stairs to her daughter's apartment, Romero noticed a candy wrapper and popcorn on the stairs and the landing at the top of the stairs. Romero stayed at her daughter's apartment for approximately three hours. When she left, she walked across the landing toward the stairs. When she was about a half a meter from the top of the stairs, Romero slipped on some soapy water and fell down the stairs, suffering "severe injuries."

Romero filed a lawsuit against Bulbulyan, alleging premises liability under negligence and willful failure to warn theories. Bulbulyan filed a motion for summary judgment on the grounds that (1) he had no notice of any defective or dangerous condition of the premises, (2) he did not owe Romero any duty with regard to the accident because the slip and fall was not foreseeable, and (3) he did not breach any duty owed to Romero. In support of his motion, Bulbulyan presented evidence that he did not know of the presence of the soapy water on the landing and that the soapy water was not

present for a sufficient amount of time to charge him with constructive knowledge of its presence. In opposition to the motion, Romero presented evidence that Romero's daughter made numerous complaints to Bulbulyan and the prior owner regarding children living in the building who were littering the stairs with trash, including food and liquids. Romero asserted that the presence of the soapy water appeared to have been caused by children blowing bubbles, and that the complaints regarding children littering was sufficient to give notice to Bulbulyan of the dangerous condition of the stairway.

The trial court granted Bulbulyan's motion, finding there was no triable issue regarding whether Bulbulyan had notice of the presence of the dangerous condition that caused Romero's injury. The court found that there was no evidence that the existence of litter in the stairway – the only dangerous condition that Bulbulyan had actual or constructive knowledge of – caused or contributed to Romero's slip and fall. Romero filed a timely appeal from the order granting the motion and entering judgment in Bulbulyan's favor.

DISCUSSION

A. Summary judgment

"[F]rom commencement to conclusion, the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law. . . . A defendant [moving for summary judgment] bears the burden of persuasion that 'one or more elements of' the 'cause of action' in question 'cannot be established,' or that 'there is a complete defense' thereto." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850, italics and footnotes omitted.) If the moving party carries that burden, the burden of production shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. (*Ibid.*) On appeal from a summary judgment, we make "an independent assessment of the correctness of the trial court's ruling, applying the same legal standard as the trial court in determining whether there are any genuine issues of material fact or whether the moving

party is entitled to judgment as a matter of law." (*Iverson v. Muroc Unified School Dist.* (1995) 32 Cal.App.4th 218, 222.)

B. Liability for Negligence

Although a landlord such as Bulbulyan is not an insurer of the safety of his tenants or their guests, he owes a duty to tenants and guests to exercise reasonable care in keeping the premises in a reasonably safe condition. (*Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200, 1205 (*Ortega*).) When, as in this case, a tenant or guest is injured by a dangerous condition on the premises, "the owner's actual or constructive knowledge of the dangerous condition is a key to establishing [the owner's] liability. Although the owner's lack of knowledge is not a defense, '[t]o impose liability for injuries suffered by an invitee due to [a] defective condition of the premises, the owner or occupier "must have either actual or constructive knowledge of the dangerous condition or have been able by the exercise of ordinary care to discover the condition, which if known to him, he should realize as involving an unreasonable risk to invitees on his premises. . . ."'" (*Id.* at p. 1206.)

In the present case, Romero presented evidence that Bulbulyan had been told that children living in the apartment building were littering in the stairways. She contends that the presence of litter on the stairway was a dangerous condition and that the condition was ongoing, rather than transient; therefore she argues that there was a triable issue of fact regarding whether Bulbulyan had knowledge of the dangerous condition. The flaw in Romero's argument is that it is undisputed that Romero slipped on soapy water (apparently caused by children playing with soap bubbles during Romero's three hour visit with her daughter) rather than on litter left in the stairway. Thus, even if Bulbulyan had notice that there was litter on the stairway, he did not have notice that there was soapy water on the landing.

Romero argues, however, that Bulbulyan should have foreseen that there would be an injury on the staircase because the children were littering, and that Bulbulyan could

have prevented Romero's injury by instituting a maintenance program for the building and by "notif[ying] all tenants of certain basic rules to be followed to avoid littering the common areas in his absence." But there was undisputed evidence before the trial court that there had been regular cleaning of the common areas and that Bulbulyan (and the previous owner before him) typically responded to complaints of littering by cleaning the area. Moreover, because the accident in this case was caused by soapy water from children blowing bubbles, rather than litter, even if Bulbulyan owed a duty to impose rules regarding littering any breach of that purported duty did not contribute to the accident.

Romero cites to *Madhani v. Cooper* (2003) 106 Cal.App.4th 412 (*Madhani*) for the proposition that Bulbulyan owed a duty to protect her from an injury apparently caused by the conduct of children of certain tenants because he had notice that the children had been littering in the stairway. Her reliance on *Madhani* is misplaced. In *Madhani*, the plaintiff, a tenant in defendants' apartment building, was injured when another tenant attacked her. (*Madhani*, *supra*, 106 Cal.App.4th at p. 415.) That other tenant on several previous occasions had threatened and assaulted plaintiff, and plaintiff repeatedly complained to the defendants' agent about the tenant's behavior. The Court of Appeal held that the defendants owed plaintiff a duty to take reasonable steps to protect her from "a tenant with a known proclivity for making verbal and physical assaults on [plaintiff]." (*Id.* at p. 416.) In the present case, however, there was no evidence that Bulbulyan had knowledge that children living at the apartment building had a habit of blowing soap bubbles on the staircase and leaving behind soapy water, and therefore he did not owe Romero a duty to take steps to protect her from any injury resulting from the children's conduct here.

Because the evidence was undisputed that Bulbulyan did not have notice of the presence of soapy water on the landing to the staircase, Romero cannot establish that Bulbulyan's negligence caused her injury. (See *Ortega*, *supra*, 26 Cal.4th at p. 1206 ["where the plaintiff relies on the failure to correct a dangerous condition to prove the

owner's negligence, the plaintiff has the burden of showing that the owner had notice of the defect in sufficient time to correct it"].) Therefore, the trial court properly granted Bulbulyan's motion for summary judgment.

DISPOSITION

The judgment is affirmed. Bulbulyan shall recover his costs on appeal.

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MOSK, J.

We concur:

GRIGNON, Acting P.J.

ARMSTRONG, J.